

REMARKS / ARGUMENTS

Upon entry of the present amendments, claim 7 is pending. Claim 7 is amended and claims 8, 9, 17, 18, 24, 41, 44, 58, and 59 are cancelled herein, without prejudice. The foregoing amendments are made without any intention to abandon the subject matter of the claims as filed, but with the intention that claims of the same, lesser or greater scope may be pursued in the present application or in a continuation, continuation-in-part or divisional application. The present amendment does not add new matter.

Support for the claim amendments can be found in the claims and the specification, as follows: SEQ ID NO: 3; FIG. 1, page 4, line 31 through page 5, line 8; page 11, lines 14-20; page 14, lines, 1-8, and 15-31.

Each of the grounds of rejection in the May 20, 2005 Office Action will be addressed in turn below:

35 U.S.C. §112

Claims 7-9, 24, 41, and 44 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirements. See pages 3-4 of the May 20, 2005 Office Action. This rejection is moot in view of the present claim amendment.

Applicants have cancelled claims 8, 9, 24, 41, and 44 and have amended claim 7 to remove the recitation "a functional equivalent derivative thereof." Accordingly, Applicants request reconsideration and withdrawal of the present rejection.

Claims 7-9, 17-18, 24, 41, 44, and 58-59 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter not described in the specification in such a way as to reasonably convey to a skilled artisan that the inventor(s) had possession of the claimed invention at the filing date of the application. See pages 4-5 of the May 20, 2005 Office Action. This rejection is moot in view of the present claim amendment.

Applicants have cancelled claims 8, 9, 17-18, 24, 41, 44, and 58-59 and have amended claim 7 to remove the recitation "a functional equivalent derivative thereof." Accordingly, Applicants request reconsideration and withdrawal of the present rejection.

Claims 7-9, 17-18, 24, 41, 44, and 58-59 are further rejected under 35 U.S.C. §112, first paragraph, for lack of enablement for SEQ ID NOs 6, 7, 9, 10, functional equivalents, derivatives or bioprecursors thereof, 85% or 90% homology/sequence identity. See pages 7-10

of the May 20, 2005 Office Action. This rejection is moot in view of the present claim amendment.

Applicants have cancelled claims 8, 9, 17-18, 24, 41, 44, and 58-59 and have amended claim 7 to remove the recitation "a functional equivalent derivative thereof." Accordingly, Applicants request reconsideration and withdrawal of the present rejection.

35 U.S.C. §102

Claims 7-9, 17-18, 24, 41, 44, and 58-59 are rejected under 35 U.S.C. § 102(e) as being anticipated by Johansen *et al.*, U.S. Patent No. 6,593,133 (hereinafter, "Johansen *et al.*"). See page 10 of the May 20, 2005 Office Action. The earliest priority date of Johansen *et al.* is July 6, 1998.

Claims 7-9, 17-18, 24, 41, 44, and 58-59 are further rejected under 35 U.S.C. § 102(e) as being anticipated by Milbrandt *et al.*, U.S. Patent No. 6,284,540 (hereinafter, "Milbrandt *et al.*"). See pages 10-11 of the May 20, 2005 Office Action. The earliest priority date of Milbrandt *et al.* is September 29, 1998.

Applicants have cancelled claims 8-9, 17-18, 24, 41, 44, and 58-59. Accordingly, the rejection of these claims is moot in light of the present amendment. Applicants respectfully traverse the rejections under 35 U.S.C. § 102 of claim 7.

The earliest priority date of the present application is July 14, 1998, before the earliest priority date of Milbrandt *et al.* Applicants respectfully submit that the sequence recited in claim 7 is contained within its earliest priority document. See, *e.g.*, Specification of UK 9815283.8 at page 12, lines 14-31, and FIG. 1. Thus, the rejection over Milbrandt *et al.* is overcome. The earliest priority date of Johansen *et al.* is July 6, 1998, Applicants respectfully submits that the polynucleotide and amino acid sequences provided in the first priority document for Johansen *et al.* differ from the sequence recited in claim 7 in several ways, including but not limited to, (i) that it lacks 14 N-terminal amino acids; (ii) that it does not include the RAAR furin cleavage site for prodomain cleavage and activation; and (iii) that it includes at least one point mutation (R158P). Thus, Applicants respectfully submit that the amino acid sequence disclosed in the first priority document for Johanssen *et al.* was not the sequence recited in claim 7, nor functionally equivalent to the sequence recited in claim 7. A sequence corresponding to that recited in claim 7 was introduced in a later-filed priority application for Johansen *et al.* For example, the first presentation of a sequence without the point mutation (R158P) was included in the patent application DK 1998 01048, filed Aug. 19, 1998.

Accordingly, Applicants respectfully submit that Applicants' priority patent application (*i.e.*, UK 9815283.8, filed July 14, 1998) contains a sequence corresponding to the sequence recited in claim 7 and represents an earlier constructive reduction to practice of said sequence than Johansen *et al.*

In addition, Applicants submit herewith an executed Declaration of Prior Invention under 37 C.F.R. § 1.131. As detailed in the Declaration, Applicants were in possession of the invention recited in claim 7 prior to July 9, 1998. Accordingly, Applicants submit they had possession of the invention prior to the earliest filing dates of the Johansen *et al.* and Milbrandt *et al.* references. In the Declaration, Applicants present two pages from a draft patent application, provided to Applicants' attorney prior to July 9, 1998. Applicants hereby reserve the right to establish an earlier date of invention, if necessary, using additional evidence which predates the facsimile referenced in the present Declaration of Prior Invention under 37 C.F.R. § 1.131.

For these reasons, the rejection of claims 7-9, 17-18, 24, 41, 44, and 58-59 under 35 U.S.C. § 102(e) is moot for both Milbrandt *et al.* and Johansen *et al.* Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. §102(e) rejections.

Claims 7, 17-18, and 24 are further rejected under 35 U.S.C. § 102(b) as being anticipated by Lin *et al.*, (1993) Science, 260: 1130-1302 (hereinafter, "Lin *et al.*"). See page 11 of the May 20, 2005 Office Action. Claims 7, 17-18, and 24 are also rejected under 35 U.S.C. § 102(e) as being anticipated by Johnson *et al.*, U.S. Patent No. 5,747,655 (hereinafter, "Johnson *et al.*"). See pages 11-12 of the May 20, 2005 Office Action. According to the May 20, 2005 Office Action, these two references disclose peptides which share 28% and 38.6% sequence similarity to SEQ ID NO: 3 and 4 of the present application and, accordingly, were stated to be functional equivalent derivatives of the instantly claimed enovin of SEQ ID NO: 3 and 4.

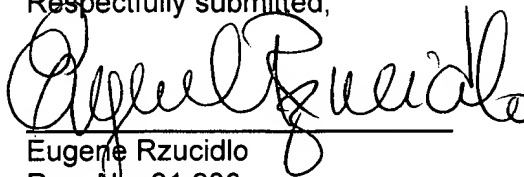
Applicants have cancelled claims 8-9, 17-18, 24, 41, 44, and 58-59 and have amended claim 7 to remove the recitation "a functional equivalent derivative thereof." Accordingly, the rejection of these claims is moot in light of the present amendment. Applicants request reconsideration and withdrawal of the present rejections.

CONCLUSION

On the basis of the foregoing amendments, Applicants respectfully submit that the pending claims are in condition for allowance. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Dated: October 19, 2005

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eugene Rzucidlo', written over a horizontal line.

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